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September 25, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

WASHINGTON, D.C. UPDATE

Continuing Resolution

The Senate will act soon on the Continuing Resolution (CR), which would temporarily fund Federal programs and activities in Federal Fiscal Year (FFY) 2009, which begins on October 1, 2008. The Senate may seek to amend the version (H.R. 2638) passed by the House. This is because, as indicated in the previous Washington, D.C. update, the House did not pass the typical CR, which temporarily funds programs at current levels. Instead, it included full-year funding for Defense, Military Construction/Veterans Affairs (VA), and Homeland Security programs, and major increases for some programs and activities, including disaster relief, the Low Income Energy Assistance Program (LIHEAP), and a new loan program for automakers. In addition, the full-year funding levels for Defense, Military Construction/VA, and Homeland Security programs are not identical to those approved by the Senate Appropriations Committee in its appropriations bills for those programs.

The funding levels in the House-passed CR and the Senate version of the FFY 2009 Homeland Security appropriations bill for grant programs of County interest include:

- Both versions fund the State Homeland Security Grant at $890 million, the same level as in FFY 2008.

- Urban Area Security Initiative funding increases from $820 million in FFY 2008 to $837.5 million in the House bill and $825 million in the Senate bill.

- Emergency Management Performance Grant funding increases to $315 million in the CR while the Senate bill provides $300 million, the same level as in FFY 2008.

- Firefighting Grant funding increases to $565 million in the CR while the Senate bill includes the same level of funding ($560 million) as in FFY 2008.

- Staffing for Adequate Fire and Emergency Response (SAFER) Program, which subsidizes the hiring of firefighters, increases to $210 million while the Senate bill includes the same level of funding ($190 million) as in FFY 2008.

- Both versions fund the Interoperable Communications Grant at $50 million, the same level as in FFY 2008.

- Both versions increase Urban Search and Rescue Team funding to $32.5 million from $25 million in FFY 2008.

The CR also includes $600,000 in pre-disaster hazard mitigation funds, requested by Representative Roybal-Allard for the County's Fire Department, to purchase a vegetation masticator, which is heavy machinery used to remove vegetation to reduce fire hazards.

Stimulus Package

Congressional Democratic leaders hope to pass an economic stimulus package this weekend. Today, Senate Majority Leader Reid and Senate Appropriations Committee Chairman Byrd released a new $56.2 billion economic stimulus package, which includes a temporary four percent increase in the Federal Medicaid match rate at an estimated cost of $19.6 billion. It also includes extended unemployment insurance benefits, increased Food Stamp benefits, $10.8 billion for transportation projects, $905 million for bioterrorism and pandemic flu preparedness, $300 million for local governments to improve energy efficiency, $300 million each for Dislocated Worker and Youth Employment programs, $500 million for COPS Hiring Grants, $490 million for Byrne Justice Assistance Grants, $60 million for senior meals programs, and $650 million to assist public housing agencies with their capital costs, energy costs, and assistance provided to tenants displaced by foreclosure. The package also includes $5.1 billion for LIHEAP and the $25 billion loan program for automakers, which was included in the House-passed CR.

House Speaker Pelosi announced that the House will vote on a new stimulus package on September 26, 2008. A summary of the House stimulus package has not yet been released, but it is expected to include a temporary increase in the Federal Medicaid match rate, extended unemployment insurance benefits, and increased Food Stamp benefits. The outlook for the stimulus package is uncertain because the President has not been supportive. However, Democratic leaders hope to gain leverage for their stimulus plan by citting the Administration's request for a $700 billion bailout for financial institutions.

Railroad Safety Improvement Act (H.R. 2095)

Yesterday, the House of Representatives passed, by voice vote, H.R. 2095 (Oberstar, D-MN), rail transportation legislation, which includes the Railroad Safety Improvement Act of 2008 and the reauthorization of Amtrak funding. The House-passed bill represents compromise language negotiated with the Senate, which passed a different version on August 1, 2008. One of the more significant requirements in the rail legislation is mandatory installation of "positive train control" systems for most passenger service and freight trains by the end of 2015. The legislation previously required the implementation of this technology by December 31, 2018, but the passenger train crash earlier this month in the County prompted Members of Congress to establish an earlier deadline. The bill authorizes $50 million annually through FFY 2013 for a new rail safety technology grant program for the deployment of rail safety technology, including positive control systems. It also includes hours-of-service reforms, which cap the number of hours worked per shift and per month, and requires workers to have at least 10 consecutive hours off duty in a 24 hour period. The bill now goes to the Senate for its approval.

Fostering Connections to Success and Increasing Adoptions Act (H.R. 6893)

On September 22, 2008, the Senate passed, by unanimous consent, H.R. 6893, the Fostering Connections to Success and Increasing Adoptions Act of 2008, which passed the House last week. The bill now goes to the President, who is expected to sign it into law. This legislation, which was introduced on September 15, 2008, moved quickly as it reflected a bipartisan agreement that was developed over the August recess and finalized earlier this month.

Major provisions of the bill include the following:

- Gives states the option to provide foster care, guardianship, and adoption assistance to children up to age 21 and receive Federal Title IV-E reimbursement for the cost of assisting these older youth, effective in Federal Fiscal Year (FFY) 2011, which begins on October 1, 2010. Under current law, Title IV-E eligibilty ends at age 18;

- Expands the eligible uses of Title IV-E training funds to train not only public child welfare agency staff, but also others in the child welfare system, including private child welfare agency staff, court staff, attorneys, and relative guardians;

- Gives states the option to use Title IV-E funds for kinship guardianship assistance (Kin-GAP) payments for foster children, who are placed with relative caretakers;

- Phases out (over 10 years) the existing requirement for Title IV-E adoption assistance eligibility that a child be removed from a family that would have qualified for Aid to Families with Dependent Children (AFDC) benefits based on AFDC need standards as of July 16, 1996. Fewer children qualify for IV-E reimbursement each year because AFDC need standards have not been adjusted for inflation;

- Requires child welfare agencies to help youth develop a transition plan during the 90-day period prior to the youth's emancipation from foster care;

- Requires state child welfare and Medicaid agencies to work together in coordinating health services for foster children;

- Requires state child welfare agencies to address educational stability in each foster child's case plan;

- Requires states to make reasonable efforts to place siblings together unless it would be contrary to the safety or well-being of any of the siblings;

- Requires states to inform any individual who is adopting a child or considering adoption of the availability of the Federal adoption tax credit; and

- Clarifies that states may waive non-safety licensing standards on a case-by-case basis in order to eliminate barriers to placing foster children with relatives.

The two provisions, which could have the greatest potential fiscal impact on the County, are the new state options to use Federal Title IV-E funds for Kin-GAP and to provide foster care, guardianship, and adoption assistance to youth up to age 21. However, under the terms and conditions of the County's Title IV-E Waiver Demonstration Project, the County receives a capped Title IV-E foster care allocation. In order for the County's Title IV-E funding to increase, this capped allocation would have to be renegotiated. The State also would have to enact enabling legislation and appropriate additional State funding to cover the increased State share of the cost of implementing these new state options. In addition, as noted earlier, the state option to increase Title IV-E eligibility up to age 21 will not be effective until October 1, 2010.

Highway Trust Fund Solvency

On September 15, 2008, the President signed H.R. 6532 into law (Public Law 110-318), which transfers $8 billion from the General Fund to the Highway Trust Fund. Without this transfer, Federal payments to reimburse states for highway project costs would have been delayed due to a shortfall in the Highway Trust Fund.

Pursuit of County Position on Regulations

Proposed Temporary Assistance for Needy Families (TANF) Rule: In August, while Congress was on its summer recess, the Department of Health and Human Services (HHS) issued a proposed rule, which would eliminate the excess maintenance-of-effort (MOE) provision that has been included in TANF regulations since 1999. Under the excess MOE provision, a state receives a caseload reduction credit, which reduces its required TANF work participation rate if the state spends more than its minimum required TANF MOE expenditure level. This rule provides states with a fiscal incentive to spend more than the minimum required MOE level to assist low-income families, including in years, such as this year, when the economy is bad and when states face budget shortfalls.

Without this excess MOE provision, it will be difficult, if not impossible, for many states, including California, to meet their work participation rate requirement. This is because TANF reauthorization provisions enacted in the Deficit Reduction Act (DRA) of 2005 and final TANF regulations implementing the DRA significantly increased the effective TANF work participation rate requirement and also made it more difficult for TANF recipients to meet work requirements. States, which fail to meet the work participation rate requirement, are subject to fiscal penalties, half of which would be borne by counties under current State law.

State and local governments and associations, such as the County Welfare Directors Association (CWDA) and American Public Human Services Association (APHSA), strongly oppose the proposed repeal of the excess MOE provision. Nothing in the legislative history of TANF's reauthorization under the DRA indicates that Congress intended to repeal the excess MOE provision. In fact, neither the Bush Administration nor any Member of Congress pursued its repeal as part of TANF reauthorization. In proposing the repeal of the excess MOE provision, HHS argues that states no longer need a fiscal incentive to invest more funds in their TANF programs, and that the DRA expanded eligible MOE expenditures, making it easier for states to spend more than the minimum MOE level. The fiscal incentive that it provides, however, is critically important in California, which faces a major budget deficit in the current and upcoming fiscal year. Moreover, while the DRA expanded eligible MOE expenditures, HHS subsequently issued final implementing regulations, which severely contracted the range of MOE eligible expenditures.

For the reasons cited above, this office and the Department of Public Social Services (DPSS) are opposed to the proposed rule. Based on policies in the County's Federal Agenda supporting proposals, which preserve or increase the current state MOE requirement and opposing proposals which would increase potential costs or fiscal penalties for states and counties under TANF, including those that otherwise would result from increased Federal requirements, **the County's Washington, D.C. advocates will oppose the proposed rule to repeal the excess MOE requirement.**

The County's DPSS is preparing comments on the proposed rule to submit to HHS before the deadline of October 7, 2008. The County also will work with CWDA, APHSA, and others to oppose the proposed rule.

We will continue to keep you advised.

WTF:GK
MT:sb

c: All Department Heads
Legislative Strategist